

**Southwest Power Pool, Inc.
CORPORATE GOVERNANCE COMMITTEE
January 5, 2018
Net Conference**

• M I N U T E S •

Agenda Item 1 – Call to Order and Administrative Items

Corporate Governance Committee (CGC) Chair Nick Brown called the meeting to order at 9:02 a.m. Members who participated were: Nick Brown (SPP), Jim Eckelberger (Director), Jason Atwood (NTEC), Denise Buffington (KCPL), Jason Fortik (LES) Rob Janssen (Dogwood), Brett Leopold (ITC), John McClure (NPPD), and Jody Sundsted (WAPA - UGP).

There were a total of 31 participants in person and on the phone (Attendance and Proxy – Attachment 1).

Agenda Item 2 – FERC Docket EL 16-91 and EL 18-19

Mike Riley provided an update on the FERC Dockets 16-91 and EL 18-19 and a review of the stakeholder efforts that occurred since the November 28, 2017, CGC meeting. SPP must submit a compliance filing with a proposal to address non-jurisdictional refund commitment by February 28, 2018. FERC expects to issue a final order on April 30, 2018. There was discussion about the proposal drafted by NPPD. Denise Buffington (IOU Rep) was supportive of addressing the legal concerns identified by Kansas and Nebraska entities but raised specific concerns regarding SPP's ability to demonstrate the proposed solution does not harm other members – e.g., impact on multi-owner zonal rates, impact on point-to-point charges, impact on through and out rates, etc.

Jason Fortik made a motion to approve the Nebraska Public Power District and Western Area Power Administration proposals (NPPD Proposal – Attachment 3 and WAPA Proposal – Attachment 4), and Brett Leopold seconded the motion. The motion passed unanimously.

Nick Brown provided the timeline for the Board of Directors vote. The Membership must be provided 30 days' notice prior to the board's consideration of the amendments to the Membership Agreement.

Agenda Item 3 – Future Meetings

February 22, 2018	Dallas, TX
August 16, 2018	Kansas City, MO
November 13, 2018	Dallas, TX

Adjournment

Nick Brown thanked everyone for participating and adjourned the meeting at 9:53 a.m.

Respectfully Submitted,

Paul Suskie, Secretary



Southwest Power Pool, Inc.

CORPORATE GOVERNANCE COMMITTEE MEETING

January 5, 2018

Conference Call

• A G E N D A •

9:00 a.m. –11:00 a.m.

1. Call to Order and Administrative Items.....Nick Brown
2. FERC Docket EL 16-91 and EL 18-19.....Mike Riley / Bill Dowling / John McClure
3. Future Meetings
2018

February 22, 2018	Dallas, TX
August 16, 2018	Kansas City, MO
November 13, 2018	Dallas, TX

CGC Conference Call and Net Conference Attendance – 5 January 2018

First Name	Last Name	Company
Paul	Suskie	SPP Staff
Mike	Riley	SPP Staff
Shaun	Scott	SPP Staff
Al	Taylor	Holland & Knight LLP
Andrew	Schulte	Midwest Energy
Bernard	Liu	Xcel Energy
Bill	Dowling	Midwest Energy, Inc.
Carroll	Reddick	Western Farmers Electric Cooperative
Dave	Alessandro	Rep for NPPD
Dennis	Reed	Midwest Regulatory Consulting, LLC
Don	Frerking	Kansas City Power & Light Company
Greg	McAuley	Oklahoma Gas & Electric
Harold	Hadland	NPPD
Heather	Starnes	Healy Law Offices/MJMEUC
Jason	Mazigian	Basin Electric Power Cooperative
Jason	Chaplin	Oklahoma Corporation Commission
Jim	Jacoby	American Electric Power
Michael	Wise	Golden Spread Electric Cooperative, Inc.
Nicole	Travis	Midwest Energy
Paul	Malone	Nebraska Public Power District
Ray	Bergmeier	Sunflower Electric Power Corporation
Richard	Lorenzo	Midwest Energy
Ronald	Klinefelter	Western Area Power Administration



HELPING OUR MEMBERS WORK TOGETHER
TO KEEP THE LIGHTS ON... TODAY AND IN THE FUTURE.

FERC DOCKETS

EL16-91 & EL18-19

- Summary & Overview
- The Compliance Obligation in the October 19, 2017 Order
- NPPD's Proposal
- Recommendation

FERC DOCKET EL16-91: SUMMARY

- FERC-initiated examination of the SPP Tariff under Section 206 of the Federal Power Act

ISSUE IDENTIFIED BY FERC:

- There is no refund commitment in the SPP Tariff requiring non-jurisdictional transmission owners to refund revenues received associated with service provided due to their status as RTO transmission owners
- This may result in SPP's jurisdictional rates not being just and reasonable

Background & Timeline

SPP Staff Recommendation to CGC (February 2017):

- **Initiate stakeholder process to develop proposed changes to the Governing Documents**

CGC Direction:

- **February 2017: Coordinate with all SPP Transmission Owners on drafting a straw proposal to comply with FERC's direction and bring proposal back to CGC.**
- **November 2017: Work with non-jurisdictional Kansas and Nebraska Members and all Transmission Owners to formulate a compliant proposal that is responsive to Kansas and Nebraska specific issues**

Status Report:

- **SPP filed Status Report on December 15, 2017**

Stakeholder Coordination

Teleconferences	Topics Covered
May 12, 2017	Docket overview; SPP strawman
June 13, 2017	Review other proposals (WFEC; NPPD; CUS; MWE)
June 28, 2017	Review SPP revised strawman based on feedback
July 27, 2017	Review Midwest Energy proposal
August 23, 2017	Review Revised Midwest Energy proposal and SPP further revised strawman
November 2, 2017	Review October 19 Compliance Order and SPP strawman
November 28, 2017	CGC Meeting
December 7, 2017	SPP Staff, NPPD, Midwest Energy, Sunflower reviewed Staff's proposal to use Bylaws 8.4
December 13, 2017	Reviewed Staff's proposal and NPPD's proposed revisions with all Transmission Owners
December 28, 2017	Reviewed NPPD's latest proposal with all Transmission Owners

Overview: October 19 Compliance Order

- Paper Hearing held in abeyance pending SPP stakeholder process
- Instituted another proceeding in EL18-19 to examine the SPP Membership Agreement and other jurisdictional documents
- SPP must submit compliance filing with a proposal to address NJ refund commitment by February 28, 2018, regardless of the outcome of Stakeholder process, or show cause as to why revisions are unnecessary

October 19 Compliance Order

Refund Authority

P. 20 - When an RTO proposes to include a non-public utility's revenue requirement in the RTO's rates, the RTO may not implement that proposal unless the non-public utility makes a voluntary commitment to make refunds if the rate, as filed, is later found to be not just and reasonable.

P. 21 - The refund commitment must be a contractual commitment that is enforceable by a court, not FERC.

P. 26 - The lack of refund commitments for non-public utilities that have collected or will collect unjust and unreasonable rates affects FERC's jurisdictional services.

P. 27 - The refund commitment would serve as a condition precedent for non-public utility transmission owning members to recover revenues through the SPP Tariff...and based on a choice they made to become members.

P. 35 - Non-public utility transmission owning members would be subject to the same refund obligations as public utility transmission owners on all matters involving the revenues that they may receive associated with service provided due to their status as transmission-owning RTO members based on RTO rates, including, but not limited to, refunds (1) to correct any errors in the application of their formula rates, (2) to remedy any other elements of, or costs passed through, their formula rates that are found to be unjust and unreasonable, or (3) to remedy any rules governing allocation of SPP Tariff revenues among transmission owners that are found to be unjust and unreasonable.

October 19 Compliance Order

Scope of Refund Commitment

Current SPP provisions that protect non-public utilities from violating state or federal law, or allow them to terminate membership to maintain compliance with such state or federal law.

P. 50 - Given our finding to hold the paper hearing in abeyance pending stakeholder proceedings to explore possible changes to the SPP Tariff or governing documents to address the lack of a refund commitment for non-public utility transmission owning members, we decline to make findings on the scope of the refund commitment in this order.

October 19 Compliance Order

Requests for Clarification

P. 53 - If SPP is required to remove a non-public utility transmission owning member's transmission revenue requirement from the SPP Tariff, SPP should remove the non-public utility transmission owning member's facilities from the SPP Tariff and SPP's functional control.

P. 56 - SPP should have flexibility to develop a proposal that recognizes the unique status of Western-UGP.

P. 58 - SPP may propose a prospective effective date for any revisions to the SPP Tariff or governing documents.

P. 60 - SPP should obtain refund commitments from all non-public utility transmission owning members at the time that it adopts the Tariff revisions establishing the refund commitment, as well as initiate the process to remove any transmission owner's transmission assets from SPP's functional control at that time.

Staff Compliance Proposal – November 28 CGC Meeting

Membership Agreement Section 3.0

(i) Subject to the provisions of this Agreement and the Tariff, and without waiving, limiting or altering Transmission Owner's non-jurisdictional status, the non-jurisdictional Transmission Owner agrees to refund, consistent with a refund order issued by FERC, any amount collected by SPP on behalf of and distributed to such non-jurisdictional Transmission Owner, in excess of the rate ultimately determined by FERC to be just and reasonable. Any such refund shall include interest calculated in accordance with the FERC refund order. Nothing in this paragraph (i) shall be deemed to amend or supersede the applicability of any provision of this Agreement or the Tariff.

Staff Compliance Proposal – November 28 CGC Meeting

- NPPD and Midwest raised concerns about the Compliance Proposal supported by a majority of Transmission Owners.
- CGC directed Staff to work with the Transmission Owners to try to develop a proposal that addresses the state law restrictions raised by NPPD and Midwest.
- Other Transmission Owners expressed concerns about being financially obligated to pay any difference between a FERC refund order and a state authority.
- As a result, NPPD proposed a refund commitment that is similar to the existing provision in WAPA's Membership Agreement that deems any NERC penalty assessed to WAPA to be uncollectable and not owed by SPP.

NPPD Proposal

Membership Agreement Section 3.0

(i) Subject to the provisions of this Agreement, prior Amendments to this Agreement and the Tariff, and without waiving, limiting or altering Member's non-jurisdictional status, the non-jurisdictional Member agrees to refund any amount collected by SPP on behalf of and distributed to such non-jurisdictional Member, (1) resulting from any overcharge caused by any billing or computation error as agreed by SPP and the non-jurisdictional Transmission Owner; (2) resulting from a refund order issued by the Commission relating to any overcharges caused by inclusion by the non-jurisdictional Member of costs of facilities that are not Transmission Facilities as allowed by Attachment AI of the Tariff; or (3) in excess of the rate ultimately determined in any other order issued by the Commission to be just and reasonable, provided, however, that if a non-jurisdictional Member cannot issue refunds required by such order because (i) its rates are subject to a state regulatory authority authorized by state statute to set transmission rates that are subject to judicial review and (ii) the refund order issued by the Commission is inconsistent with applicable state law, regulation or regulatory determination, SPP will provide to the Commission any difference identified by the non-jurisdictional member between the Commission-ordered refund and the state-law, regulation or regulatory determination as uncollectible and not otherwise owed by SPP. Determinations of compliance with applicable state law shall be made pursuant to the process and rights in accordance with Sections 3.11 and 3.12 of this Agreement and prior Amendments to this Agreement. Any such refund shall include interest calculated in accordance with the FERC refund order. Nothing in this paragraph shall be deemed to amend or supersede the applicability of any provision of this Agreement, prior Amendments to this Agreement or the Tariff.

NPPD Proposal

Two specific refund commitments:

- (1) overcharges caused by billing or computation errors;
- (2) overcharges caused by inclusion of that are not Transmission Facilities pursuant to Tariff Attachment AI.

One general refund commitment, with the caveat that if the NJ Member's transmission rates are subject to state authority and that Member deems it cannot refund because it would be inconsistent with the state authority, the difference between the FERC-ordered refund and the state determination is uncollectible and not otherwise owed by SPP.

WAPA Amendment

AMENDMENTS TO SPP MEMBERSHIP AGREEMENT FOR THE WESTERN AREA POWER ADMINISTRATION-UPPER GREAT PLAINS REGION

A1.12. Western-UGP's Agreement to Pay Refunds

In the event FERC issues an order under section 205 or 206 of the Federal Power Act directing SPP to pay refunds, and SPP seeks a portion of those refunds from Western-UGP, Western-UGP agrees to pay such portion upon request from SPP. However, Western-UGP's agreement to pay any such refund is limited by the following:

- a) Western-UGP does so without waiving, limiting or altering its non-jurisdictional status or its rate review described in Sections 3.10 and 3.11 of the Agreement.
- (b) Western-UGP's obligation to pay a refund shall only be prospective from the date of an initial FERC order establishing the date of any refund.
- (c) Western-UGP shall only make a refund if such refund is not otherwise covered by Western-UGP's statutory and regulatory requirements for refunds described in Section 3.10 of the Agreement.
- (d) Any disputes under this contract provision between Western-UGP and SPP shall be resolved in accordance with Federal contract law, and Western-UGP's potential interest due on the refund shall be capped at the Prompt Payment Act interest rates as published by the Secretary of Treasury and published by the Fiscal Service semi-annually in the Federal Register, and the forum for any disputes shall be the applicable Federal court.

Stakeholder Coordination

Transmission Owners Voting on NPPD Proposal

Transmission Owner	Yes	No	Does Not Oppose or Uncommitted	Transmission Owner	Yes	No	Does Not Oppose or Uncommitted
East River				CPEC			
Excel / SPS			X	AEP			
GRDA	X			Westar			X
OGE				OMPA			
OPPD	X			Basin	X		
LES	X			MRES			
WAPA	X			Empire			
WFEC	X			Northwestern			
KPP	X			KCPL			
Heartland				Midwest Energy	X		
NPPD	X			Central Nebraska			
CUS	X			Harlan			
AECC				Tri-State			X
ITC	X			SWPA	X		
Sunflower	X			ETEC			
Mid-Kansas	X						

Compliance Obligations

- SPP must submit a compliance filing with a proposal to address NJ refund commitment by February 28, 2018, regardless of the outcome of Stakeholder process, or show cause as to why revisions are unnecessary
- FERC expects to issue a final order on April 30, 2018

CGC Options

(1) Staff Compliance Proposal

- SPP Legal assesses a higher chance of FERC acceptance
- Unequivocal refund commitment
- Still subject to Section 3.11 and 3.12 of the Membership Agreement, which allows Member to assess its compliance with State authority in light of the FERC refund order, and withdraw if deemed necessary (consistent with the remedy FERC identified in October Order)

(2) NPPD Compliance Proposal

- SPP Legal assesses a lesser chance of FERC acceptance
- Qualified refund commitment
- Justification needs to be well-defined and detailed with support of SPP Members

Recommendations

(1) Approve either Staff Compliance Proposal or NPPD Compliance Proposal to incorporate into the SPP Membership Agreement;

(2) Approve WAPA Amendment to incorporate into Membership Agreement;

(3) Request July 30, 2018 Effective Date for Membership Agreement Changes

Allows Midwest Energy time to pursue state legislative options

(i) Subject to the provisions of this Agreement, prior Amendments to this Agreement and/or the Tariff, and without waiving, limiting or altering Member's non-jurisdictional status, a non-jurisdictional Member agrees to refund any amount collected by SPP on behalf of and distributed to such non-jurisdictional Member, (1) resulting from any overcharge caused by any billing or computation error as agreed by SPP and a non-jurisdictional Member; (2) resulting from a refund order issued by the FERC relating to any overcharges caused by inclusion by a non-jurisdictional Member of costs of facilities that are not Transmission Facilities as allowed by Attachment AI of the Tariff; or (3) in excess of the rate ultimately determined in any other order issued by the FERC to be just and reasonable, provided, however, that if a non-jurisdictional Member cannot issue refunds required by such other order described under (3) because, (i) its rates are subject to a state regulatory authority authorized by state statute to set transmission rates that are subject to judicial review and (ii) the refund order issued by the FERC is inconsistent with applicable state law, regulation or regulatory determination, SPP will provide to the FERC any difference identified by the non-jurisdictional member between the FERC-ordered refund and the state-law, regulation or regulatory determination as uncollectible and not otherwise owed by SPP. Determinations of inconsistency with applicable state law shall be made pursuant to the process and rights in accordance with Sections 3.11 and 3.12 of this Agreement and prior Amendments to this Agreement. Any such refund shall include interest calculated in accordance with the FERC refund order. Nothing in this paragraph shall be deemed to amend or supersede the applicability of any provision of this Agreement, prior Amendments to this Agreement and/or the Tariff.

**AMENDMENTS TO SPP MEMBERSHIP AGREEMENT FOR THE WESTERN AREA POWER
ADMINISTRATION-UPPER GREAT PLAINS REGION**

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- (c) Western-UGP shall only make a refund if such refund is not otherwise covered by Western-UGP's statutory and regulatory requirements for refunds described in Section 3.10 of the Agreement; and,
- (d) Any disputes under this contract provision between Western-UGP and SPP shall be resolved in accordance with Federal contract law, and Western-UGP's potential interest due on the refund shall be capped at the Prompt Payment Act interest rates as published by the Secretary of Treasury and published by the Bureau of Fiscal Service semi-annually in the Federal Register, and the forum for any disputes shall be the applicable Federal court.